

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY A. REMING and PATRICIA A.
REMING,

Plaintiffs,

v.

HOLLAND AMERICA LINE INC., *et al.*,

Defendants.

Case No. C11-1609RSL

ORDER GRANTING MOTION TO
CONTINUE TRIAL AND RELATED
DEADLINES

I. INTRODUCTION

This matter comes before the Court on plaintiffs’ “Motion to Amend Case Scheduling Order to Continue Trial and Related Deadlines for Six Months” (Dkt. # 88). Plaintiffs seek to continue the trial date and related deadlines to give them additional time to serve defendant Tropical Tours SA DE (“Tropical Tours”), a Mexican corporation. Defendants object to continuing the trial date and contend that a delay is unnecessary and will prejudice defendants.

Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

(1) This case arises out of plaintiff Gary Reming’s fall into an underground pit while walking on a sidewalk in Mazatlan, Mexico. Dkt. # 43 ¶ 20. Mr. Reming and his wife were

1 visiting Mazatlan as part of a cruise operated by Holland America Line Inc. (“HAL”), Holland
2 America Line N.V., HAL Antillen N.V., and HAL Nederland N.V. (collectively “Holland
3 America”). Id. ¶ 19. At the time of Mr. Reming’s fall, the plaintiffs were taking a tour given by
4 Tropical Tours. Id. ¶ 20.

5 (2) Plaintiffs filed the complaint in this case on September 27, 2011, alleging claims of
6 deceit, negligence, negligent misrepresentation and loss of consortium against Holland America.
7 Dkt. # 1. In March 2012, the Court entered the parties’ stipulation and order allowing plaintiffs
8 to amend the complaint to add Tropical Tours as a defendant. Dkt. # 27. Less than two weeks
9 after filing the first amended complaint, plaintiffs sought leave of court to file a second amended
10 complaint. Dkt. # 31. The Court granted plaintiffs’ request to file a second amended and
11 plaintiffs filed the second amended complaint on April 20, 2012. Dkt. # 41; Dkt. # 43.

12 (3) After plaintiffs added Tropical Tours as a defendant in this case, plaintiffs promptly
13 initiated the process to serve Tropical Tours in Mexico. Dkt. # 90 ¶¶ 2-3. Plaintiffs engaged
14 APS International, Ltd (“APS”) to arrange for service of the summons and second amended
15 complaint on Tropical Tours in Mexico. Id. ¶¶ 3-5. As part of the foreign service process, the
16 Court appointed APS the international process server to serve Tropical Tours in this case. Dkt. #
17 49. On June 12, 2012, plaintiffs sent the required translated and certified documents to APS and
18 on June 15, 2012, APS sent the documents to the Mexican Central Authority to serve on
19 Tropical Tours. Dkt. 90 ¶¶ 9-10. APS informed plaintiffs that service on Tropical Tours may
20 take four to six months or longer from the time the request was submitted. Id., Ex. 2.

21 (4) On November 29, 2012, plaintiffs learned that the Mexican government attempted to
22 serve Tropical Tours on October 9, 2012, but the address and name provided were that of the
23 company’s tourism booth, not the actual corporation. Id., Ex. 4. APS gave plaintiffs the correct
24 name and address of the entity they seek to serve in Mexico and explained that plaintiffs would
25 have to complete the entire process again after revising the documents to reflect the correct name
26 and address. Id.

1 (5) Since the time plaintiffs filed the second amended complaint, Holland America has
2 withdrawn a motion for summary judgment, Dkt. # 46, filed a new motion for summary
3 judgment, Dkt. # 63, and continued the noting date of the second motion for summary judgment
4 four times, Dkt. # 68; Dkt. # 69; Dkt. # 70, Dkt. # 71. Holland America renoted its motion for
5 summary judgment based on plaintiffs' request for additional time to respond and the ongoing
6 settlement negotiations between the parties. Dkt. # 68; Dkt. # 69; Dkt. # 70, Dkt. # 71. Trial is
7 scheduled to begin February 4, 2012. Dkt. # 15.

8 (6) Federal Rule of Civil Procedure 16(b)(4) provides that a court's scheduling order
9 "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).
10 District courts have broad discretion to grant or deny a motion to continue the trial. United
11 States v. Flynt, 756 F.2d 1352, 1358 (9th Cir. 1985). Despite diligent effort by plaintiffs, the
12 Tropical Tours has not been properly served in this case. See dkt. # 90 ¶¶ 3-15. Plaintiffs
13 investigated and relied on information produced by Holland America to identify the name and
14 address of Tropical Tours. Id. ¶ 15, Ex. 5. Plaintiffs have been diligent in pursuing service on a
15 Mexican corporation. The Court finds that plaintiffs have demonstrated good cause for
16 continuing the trial date.

17 (7) Holland America contends that it will be prejudiced by delay, but it has failed to show
18 how it will suffer significant prejudice if the Court continues the trial date. Dkt. # 91 at 3-5.
19 Additional expenditures for continued litigation do little to establish prejudice. Moreover, the
20 Court finds that it the interest of judicial economy and efficiency weigh in favor of continuing
21 the trial and related deadlines. The Court GRANTS plaintiffs' motion to continue the trial and
22 continues the trial date to September 9, 2013.

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24 For all the foregoing reasons, the Court GRANTS plaintiff's motion to continue the trial
25 (Dkt. # 88). The Clerk of the Court will issue a new Case Management Order.

1 DATED this 9th day of January, 2013.

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4 Robert S. Lasnik
5 United States District Judge
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